

Exhibit 3

SIRIANNI YOUTZ
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October 27, 2022

By EMAIL ONLY

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**RE: *C.P. v. Blue Cross Blue Shield of Illinois, No. 3:20-cv-06145-RJB –
Expert Disclosure of Scott Carr, Ph.D.***

Dear Gwendolyn and Stephanie:

I received your letter of 10/27/2022 informing Plaintiffs' counsel of Defendant's unwillingness to withdraw their untimely disclosed rebuttal expert, Scott Carr, Ph.D. I am writing to clear up a few assertions in your letter that either show a misunderstanding of past events or mischaracterize them. This is not meant to be an encyclopedic correction of your letter's errors, and so if we fail to address any particular assertion in your letter, that should not be considered to be any sort of admission that the assertion is correct.

As an initial matter, Plaintiffs' disclosure of Dr. Fox as a likely expert witness was timely made on 6/17/2022. To the extent that it was not possible to provide you with a report from Dr. Fox contemporaneously with his identification as a potential witness, that situation was entirely of Defendant's own making. As you are aware, and as Plaintiffs' counsel Eleanor Hamburger informed you at the time, Dr. Fox's inability to complete his report by 6/17/2022 resulted from Defendant's intransigence in refusing to turn over necessary discovery, discovery that the Court subsequently ordered your client to produce. Even after Defendant was ordered by the Court to make necessary disclosures, Defendant continued to delay required discovery production, further delaying the completion of the report and its production.

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Page 2

Moreover, Defendant deposed Dr. Fox after receiving his report and did so well before filing responsive briefing on Plaintiffs' Motion for Class Certification and Motion for Summary Judgment, eliminating any possible prejudice you could argue flowed from your receipt of Dr. Fox's report after 6/17/2022. Conversely, Plaintiffs had no ability to depose Dr. Carr before completing their summary judgment or class certification briefing. Indeed, you disclosed Dr. Carr as a witness only after the discovery cutoff deadline, one business day before the dispositive motion cutoff, and shortly before the *Daubert* briefing is due. Accordingly, your suggestion that Plaintiffs are somehow not prejudiced by Dr. Carr's belated disclosure because Plaintiffs could have assertedly sought Dr. Carr's deposition is specious. Even if the disclosure had been made with substantial time to depose Dr. Carr – with the Court's authorization – before briefing class certification and dispositive motions, the necessity to seek the Court's authorization to extend the discovery deadlines to permit Dr. Carr's deposition is itself legally cognizable harm. *See Wong v. Regents of the Univ. of Cal.*, 410 F.3d 1052, 1062 (9th Cir. 2005) (excluding untimely disclosed witness even though the ultimate trial date was still some months away, noting that "[d]isruption to the schedule of the court and the other parties is not harmless").

As Defendant continues to seek to rely on Dr. Carr's late-disclosed testimony, Plaintiffs shall take appropriate measures to seek the Court's refusal to consider such evidence. If you wish to discuss this, please feel free to contact me at dgross@sylaw.com. If you would prefer to discuss this directly, please feel free to suggest some times you are free for a call.

Thank you for your consideration.

Very truly yours,
SIRIANNI YOUTZ
SPOONEMORE HAMBURGER PLLC

/s/ Daniel S. Gross

Daniel S. Gross

DSG:sh
cc: Omar Gonzalez-Pagan
Jenny Pizer
Eleanor Hamburger